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MEMORANDUM OF UNDERSTANDING BETWEEN THE UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, THE UNITED STATES DEPARTMENT OF AGRICULTURE, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR

Recitals

1. The Utah Schools and Land Exchange Act of 1998, Pub. L. No. 105-335, 112 Stat. 3139 ("the Act"), ratified the May 8, 1998, "Agreement to Exchange Utah School Trust Lands Between the State of Utah and the United States of America" entered into between the State of Utah and the United States of America ("the Agreement").

2. The United States Department of the Interior ("DOI"), and the Utah School and Institutional Trust Lands Administration ("SITLA") each have responsibilities to implement the terms of the Agreement. The United States Department of Agriculture, Forest Service ("USDA-Forest Service"), which has jurisdiction, custody, and control over National Forest System Lands ("NFS lands"), is also subject to the terms of the Act and the Agreement with respect to NFS lands involved in the exchange of lands and interests in lands. Therefore, USDA-Forest Service is a Party to this MOU with respect to the NFS lands subject to the terms of the Act and the Agreement. The aforementioned entities will be collectively referred to hereinafter as "the Parties," or separately as a "Party."

3. The Parties recognize that it is in their mutual interest to agree on how certain actions necessary to implement the Act and the Agreement will be effected, and therefore enter into this Memorandum of Understanding ("MOU").

4. Among other provisions, this MOU implements Sections 8 and 10 of the Agreement which defines the Parties' respective responsibilities for environmental remediation, waste management and environmental compliance activities associated with the lands which each Party has transferred, or will transfer, to the other pursuant to the Act. Section 8 contemplates remediation of the subject lands following the date of transfer of title, and this MOU, consistent with Section 8, provides that each Party will continue to be legally responsible, to the extent such responsibility exists at the time of transfer of title, for environmental response actions, including actions specified herein, on the land that each Party respectively transfers. Except as consistent with the Agreement, nothing in this MOU is intended to relieve any party of its substantive or procedural environmental obligations under existing State or Federal law.

5. Section 10 of the Agreement calls for development of any mineral interests transferred to the State of Utah where the United States retains ownership interests in the land to be subject to all laws, rules, and regulations applicable to development of non-Federal mineral interests underlying Federally-owned surface, including laws, rules, and regulations applicable to such development within the National Forest System. The Regulations of the Secretary of Agriculture at Title 36, Code of Federal Regulations ("C.F.R."), section 251.50 will apply to the occupancy and use of the surface estate of National Forest System lands for the development of the conveyed coal estate . However, mining induced subsidence need not be permitted separately

where the State of Utah has authorized mining in accordance with 30 C.F.R. section 944.30, Article VI, B.5. To the extent provided by law, in surface occupancy permits and conditions of concurrence to mining permits, the USDA-Forest Service will abide by the standards and guidelines contained in the Land and Resource Management Plan for the Manti-La Sal National Forest which were in effect on May 8, 1998. Subject to reasonable terms and conditions for the protection of the surface estate consistent with the Forest Plan, any permit requirement may not prohibit reasonable economic development of the conveyed coal estates.

Memorandum of Understanding

I. Coal Mineral Interests

A. Pre-Leasing Issues

Before SITLA issues a lease on the Cottonwood, Westridge, Mill Fork, Dugout, Muddy, or North Horn Tracts conveyed to SITLA under paragraphs 3(F), 3(G), 3(K), 3(L), and 3(M) of the Agreement --

1. Within an agreed time frame, DOI's Bureau of Land Management ("BLM") will provide SITLA with the following for that tract:

a. The amount of the coal reserves for the tract;

b. A pre-lease estimate of fair market value ("FMV"), or comments on SITLA's consultant's assessment of FMV; and

c. Recommendations to SITLA on lease bond amounts.

2. For that tract, SITLA will --

a. Coordinate sale schedules with BLM;

b. Consider BLM's determination of, or comments on, coal reserves and FMV when it negotiates bonus bids with prospective lessees;

c. Establish the amount of the lease bond in consultation with BLM; and

d. Cooperate with the USDA- Forest Service to identify the applicable Forest Plan standards and guidelines necessary to protect National Forest Resources and to fulfill the requirements of Title 36 C.F.R. section 251.50.

B. Lease Instrument Contents

SITLA agrees that for each lease SITLA issues on lands subject to reversion to the United States under sections 3(F), 3(K), 3(L), and 3(M) of the Agreement (the Cottonwood, Mill Fork, Dugout, Muddy, and North Horn Tracts), SITLA will include the following in the lease terms:

1. The reversionary provisions of the Agreement and the Act that apply to the individual lease.

2. An express agreement by the lessee as follows:

> The lessee agrees that after reversion of the lessor's interest to the United States, the Secretary of the Interior may establish the reasonable value of post-reversion production for royalty purposes in the same manner and by the same methods as the United States establishes value under Federally-issued leases.

3. An express agreement by the lessee as follows:

> The lessee agrees that after reversion, the lessee will be subject to the requirements of the Mineral Leasing Act. 30 U.S.C. §§ 181 *et seq.*, and royalty, operating, and administrative procedure rules and regulations of the Department of the Interior, the Minerals Management Service ("MMS"), and the Bureau of Land Management ("BLM") and any other Federal laws and regulations generally applicable to coal leases issued under the Mineral Leasing Act to the same extent as if the lease were a Federally-issued lease. However, to the extent that SITLA approves a significant operational decision and the lessee makes a substantial economic commitment based upon SITLA's approval, the lessee may continue to rely on that approval after reversion. Provided, however, that nothing herein will affect the liability of the lessee under CERCLA, RCRA, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, or other applicable environmental law.

4. Express agreements by the lessee relating to "Hazardous Substances," and "Indemnification" that are appended to this MOU as Appendix 1. Prior to the issuance of any lease, the Parties further agree to jointly develop provisions to address "Waste Certification," "Discharges of Oil," "Oil Discharge Indemnity," and "Discharged Oil Certification" for inclusion in leases. If necessary, the Parties may modify language provided in Appendix 1 to bring the provisions of Appendix 1 into conformance with the subsequently developed provisions.

5. An express agreement by the lessee as follows:

> The lessee agrees that it will furnish bonds or other financial guarantees meeting both State and Federal mineral lease bond or

financial guarantee requirements and that upon any forfeiture after reversion, those bonds or financial guarantees will be payable to the Secretary of the Interior.

6. An express agreement by the lessee as follows:

The lessee agrees that it will report production and royalties monthly in accordance with applicable State requirements and, after reversion, in accordance with applicable Federal regulations.

7. An express agreement by the lessee as follows:

The lessee agrees that the BLM may conduct underground inspections of all mines on the leased premises, regardless of whether the BLM is acting in cooperation with the Utah School and Institutional Trust Lands Administration as lessor or under the authority of Federal laws and regulations after any reversion of the lessor's interest to the United States.

C. **Post-Leasing Issues**

1. After SITLA issues any lease on the Cottonwood, Mill Fork, Dugout, Muddy, or North Horn Tracts, in cooperation with SITLA BLM will:

a. Inspect underground operations on a quarterly or other agreed upon basis to, among other things, verify production amounts and to determine compliance with the hazardous waste certification stipulation. Inspections will be coordinated, scheduled, and conducted jointly, if possible, with SITLA. BLM will notify SITLA of any underground and related surface operational problems observed or suggest remedial actions;

b. Provide SITLA with timely technical advice for SITLA's mining plan approvals and modifications and lease modifications. Such advice will address issues relating to maximum economic recovery ("MER") and avoiding coal bypass; and

c. Provide SITLA with timely technical advice regarding potential coal bypass and hazardous waste certification concerns on any lease relinquishment proposals.

2. After SITLA issues any lease on the Cottonwood, Mill Fork, Muddy, or North Horn Tracts, in cooperation with SITLA the USDA-Forest Service will:

a. Apprise SITLA of any concerns with respect to compliance with the hazardous waste certification stipulation or other surface operational problems concerning operations on NFS lands:

b. Provide SITLA timely information and/or comments on the surface effects of underground mining with respect to SITLA's mining plan approvals and modifications, lease modifications, and lease relinquishments; and

c. Timely process any surface use permits necessary to support the development of the coal interest.

3. After SITLA issues any lease on the Cottonwood, Mill Fork, Dugout, Muddy, or North Horn Tracts, SITLA will:

a. Provide BLM and the USDA- Forest Service, where NFS lands are involved, timely copies of all applications for mining plan approvals and modifications and lease modifications and relinquishments, and will consider BLM and USDA-Forest Service comments in determining whether to approve such applications and in developing any special approval conditions;

b. Report to BLM total royalty and rental income derived from all leases SITLA issues on the Cottonwood Tract conveyed under paragraph 3(F) of the Agreement by March 1 of each year for the preceding calendar year. When the total royalty and rental income is within one million dollars of the amount that triggers reversion to the United States, SITLA will report to BLM each month the total royalty and rental income derived from these leases;

c. Report to BLM by March 1 of each year for the preceding calendar year the total production from all leases SITLA issues on each of the following tracts. When the total production from all leases on each of the following tracts reaches the corresponding tonnage stated below, SITLA will report to BLM each month the total production from the tract:

Mill Fork Tract (Agreement § 3(K))	21 million tons
Dugout Canyon and Muddy Tracts (Agreement § 3(L))	33 million tons
North Horn Coal Tract (Agreement § 3(M))	99 million tons

For purposes of this paragraph (c), and for determining when reversion occurs for the Mill Fork, Dugout Canyon and Muddy, and North Horn Tracts under the cited Agreement provisions, coal is considered to be produced when it is subject to royalty under the SITLA lease; and

d. Be reasonable and prudent in making operational and other lease management decisions that would likely have consequences extending past the reversion date. SITLA agrees that it will provide BLM and the USDA-Forest Service with an opportunity to provide advice regarding those decisions. SITLA further agrees that for all such decisions made within one year of the expected reversion date, BLM must concur with such decisions, such consent not to be unreasonably withheld.

D. <u>Reversion Issues</u>

1. SITLA agrees that all royalties received on production beyond the royalty and rental income or tonnage amounts that trigger the reversion to the United States as provided in paragraphs 3(F), 3(K), 3(L), and 3(M) of the Agreement in the month in which the threshold royalty and rental income or tonnage amount is reached will be paid to MMS by the last day of the second month following the month in which the royalty or rental income or tonnage threshold amount is reached.

2. Any coal produced from a lease subject to reversion that was stockpiled before reversion for which no royalty was paid to SITLA will be subject to payment of royalty to the United States in accordance with MMS regulations.

3. Upon the occurrence of conditions subsequent, specific to each tract identified in section 3(F), 3(K), 3(L), and 3(M) of the Agreement (the Cottonwood, Mill Fork, Dugout, Muddy, and North Horn Tracts), each such tract will revert to the United States. Notwithstanding such reversion, SITLA will remain responsible for: identifying the location of any reportable release of hazardous substances or the discharge of oil (as those terms are defined in Part IV of this MOU) prior to the reversion; characterizing the environmental condition of each such tract at the time of reversion; and taking any response actions necessary for compliance with all applicable Federal or State laws, arising from environmental conditions existing on each such tract at the time of reversion, consistent with each tract's future anticipated use. SITLA will transmit to the United States not more than two years prior to the expected date of reversion a schedule for the completion of such actions prior to the date of reversion. If there is disagreement as to the urgency, necessity, or degree of the response action required, the Parties will use the dispute resolution procedure identified under this MOU.

4. Under section 3(F) of the Agreement, the coal mineral interest in the Cottonwood Tract reverts to the United States after SITLA receives $13,006,105 in royalty and rental income. The Agreement also notes that such amount may be subject to adjustment for interest. The Parties agree to determine the reversion as follows:

a. Under the Agreement, the $13,006,105 is an amount that SITLA is entitled to above what the State would have received under the provisions of 30 U.S.C. 191 had all or part of the Cottonwood Tract been leased by the United States. Therefore, the reversion will occur after SITLA receives $26,012,210 in rental and royalty income from disposition of all or part of the coal mineral interest in the Cottonwood Tract, subject to adjustment under paragraph I.D.4(b). One-half of what SITLA receives each month will reduce the $13,006,105 principal balance due under the Agreement and be used to pay accrued interest under paragraph I.D.4.(b).

b.(i) To compensate SITLA for the time value of the money until it receives the additional $13,006,105 under the Agreement, interest will be calculated at the end of each month on the average daily remaining principal balance for that month (which starts at $13,006,105). The interest rate will be the rate for a five-year Treasury note on the last business day of that month. Interest will be calculated as simple interest and will begin accruing January 8, 1999.

(ii) When SITLA receives rental or royalty income, on the day of receipt such amounts will be applied first to accrued interest, and any remaining amount will reduce the principal balance.

For example, assume that interest on $13,006,105 is $50,000 per month ($30,000 for January 1999). For the first six months, $280,000 in interest would accrue (no interest accrues on the outstanding interest balance) and the principal balance would be unchanged. On the first day of Month Seven, a lessee pays $200,000 in rental. Under paragraph I.D.4.(a), $100,000 would be applied to reduce the interest balance from $280,000 to $180,000 and the principal balance would not be reduced. But if in Month Seven that lessee paid $800,000 in rentals instead of $200,000, then $400,000 would be applied to the outstanding principal and interest. First, $280,000 would be used to pay accrued interest, and then $120,000 would be used to reduce the principal balance. At the end of Month Seven, interest would be calculated on a principal balance of $12,886,105 (assuming that is the average daily outstanding principal balance for the month). Rental interest in Month Eight would be applied first to that interest, and then the remainder would further reduce the $12,886,105 principal balance.

Reversion will occur after SITLA receives rental and royalty income from some or all of the coal mineral interest in the Cottonwood Tract totaling $26,012,210 plus an amount equal to the total of the simple interest calculated on the principal balance under this paragraph.

5. To insure uninterrupted operations on coal leases that revert to the United States pursuant to the Agreement, SITLA's approval of a mine plan after consultation with BLM and USDA-Forest Service (with respect to National Forest System lands) pursuant to the terms of this Memorandum of Understanding, and the Utah Division of Oil, Gas, and Mining's (DOGM) final approval of a mine permit for such state leases under the Surface Mining Control and Reclamation Act of 1977, will be deemed to satisfy any requirements for federal mining plan or resource recovery and protection plan approval under 30 C.F.R. Part 746 and 43 C.F.R. Group 3400 applicable at the time of reversion, together with any requirements for concurrence in such plans or permits by USDA- Forest Service applicable at the time of reversion. To the extent that approvals by the State Historic Preservation Officer (SHPO), consultations with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act, or other necessary consultations or approvals were completed at the time of the original mine permit issuance, then such approvals shall continue in effect and be deemed to satisfy any requirements or for such consultations or approvals at the time of reversion. No later than one year prior to the anticipated date of the reversion of each tract, the parties will consult with each other, the lease operator, and the DOGM to determine whether additional approvals or consultations will be required, and each Party agrees to take such steps and execute such documents as may be reasonably necessary to ensure uninterrupted operations upon reversion.

6. If SITLA approves a significant operational decision and the lessee makes a substantial economic commitment based upon SITLA's approval, BLM agrees after reversion to abide by SITLA's approval.

II. Oil and Gas, Coal, and Other Mineral Royalty Issues

A. The State is entitled to all royalty revenues derived from existing leases on lands the State is conveying to the United States under the Agreement on production occurring before the date the lands are conveyed to the United States. The United States is entitled to all royalty revenues derived from existing leases on lands the United States is conveying to the State under the Agreement on production occurring before the date the lands are conveyed to the State.

B. If conveyance to the United States of lands subject to existing State-issued leases does not occur on the first day of the period for which royalties accrue (for example, a production month for oil and gas leases or the month of shipment, sale, processing, or use for coal leases), the State is entitled to that proportion of the royalty revenues derived from the lease for that period that equals the number of days in the period before the date of conveyance divided by the number of days in the period. If conveyance to the State of lands subject to existing Federal leases does not occur at the beginning of a production month, the United States is entitled to that portion of the royalty revenues derived from the lease for that month that equals the number of days in the month before the date of conveyance divided by the number of days in the month.

For example, assume conveyance occurs on January 8, 1999. For an oil and gas lease that requires monthly royalty payment, the transferor would retain 8/31 of the royalties due for January production. The transferee would be entitled to 22/31 of the royalties due for January production. For a mineral lease that requires quarterly royalty payments, the transferor would retain 8/90 of the royalties derived from production in the first quarter of 1999, and the transferee would be entitled to 82/90 of those revenues.

C. If either Party receives lease revenues to which the other Party is entitled under the Agreement, the Party first receiving the money agrees to pay the amount to which the other Party is entitled by the end of the second month following the month in which the revenues were received.

D. If annual lease rental payments for mineral leases are due before the date of conveyance, the Party to whom the rental payment is owed on the due date is entitled to retain the entire rental payment, regardless of whether the lease goes into production during the year for which rental was paid.

E.1. If --

a. the lands within a single lease are segregated as a result of a conveyance under the Agreement; and

b. the lease was not committed to any Federally-approved unit or communitization agreement before conveyance,

then the Parties agree that so long as there is production in paying quantities from any well on either of the segregated parcels, such production will hold each of the segregated leases in full force and effect.

2. a. If the well spacing unit from which production occurs lies entirely within the boundaries of one of the segregated parcels, royalties on that production are payable only to the Party who is the lessor of that parcel.

b. If a well spacing unit has been established or is established in the future, and parts of the spacing unit are within both of the segregated parcels, the Parties will allocate royalties based on the proportionate acreage of the spacing unit within each parcel.

F. SITLA agrees that under section 3(P)(ii) of the Agreement, it will pay to MMS 50 percent of the bonus bid it receives when it issues each lease under section 3(P)(i) of the Agreement, reduced by 50 percent of administrative costs as prescribed in section 3(P)(ii), no later than the last day of the second month following the month in which the State receives the bonus payment. The Parties further agree that for any lands or interests in land that the State receives from the United States under the Agreement that are subject to an existing mineral lease, SITLA may amend or replace a Federally-issued lease instrument, with the lessee's consent, and not be subject to section 3(P)(i) as long as SITLA does not extend the lease term or add previously unleased acreage.

III. Mining Claim Administration

If any of the lands conveyed to the State under the Agreement are encumbered by mining claims, mill sites, or tunnel sites located under the Mining Law of 1872, 30 U.S.C. § 22 *et seq.* --

A. SITLA will:

1. Recognize the mining claimants' and site holders' interests in all valid mining claims and site locations as property interests and allow them to develop those minerals or use the sites so long as they comply with applicable laws and regulations including without limitation applicable state filing and claim maintenance requirements; and

2. Adjudicate any mining claim or site validity issues in the appropriate state or Federal court according to the Mining Law of 1872, as amended, and case law interpreting that law.

B. BLM will provide notice to each mining claimant and site holder that its mining claims or site locations --

1. Will be administered by SITLA and that compliance with the state filing and claim maintenance requirements contained in Utah Code Ann. Section 53C-2-104 will be required to avoid abandonment of such claim under state law;

2. Will no longer be administered by the United States;

3. Will no longer be subject to Federal filing or fee requirements or BLM surface management requirements; and

4. That the Secretary of the Interior no longer has jurisdiction to adjudicate the validity of any mining claim or site.

IV. Environmental Compliance

A. Definitions.

1. With respect to this Part IV of this MOU, unless otherwise defined herein, all terms have the meaning provided under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, and other applicable Federal environmental laws.

2. The term "land" means lands, resources, and interests therein.

3. The term "hazardous substance" means any substance designated under 42 U.S.C. § 9601(14); any regulated substance contained in, or released from, any underground storage tank, as defined by the Resource Conservation and Recovery Act at 42 U.S.C. § 6991, *et seq;* and any substance defined and regulated as "hazardous" by applicable State law.

4. The terms "oil" and "discharge" are defined by the Clean Water Act at 33 U.S.C. §1321(a)(1) and 33 U.S.C. §1321(a)(2), respectively.

B. Environmental Compliance Responsibilities

The Parties agree to the following:

1. Apportionment of Costs and Funding of Obligations

Each Party will be responsible for the costs associated with response actions and other actions specified in this Part IV, on lands it transfers, except as provided in section IV(B)(2) of this MOU. Commitments of any funds made pursuant to Part IV of this MOU will be subject to the availability of appropriated funds. No provision of this Agreement requires the United States to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, in any fiscal year for actions

subject to the Agreement and this MOU. No provision of this Agreement obligates the State of Utah or SITLA to obligate or pay funds not appropriated by the Utah legislature.

2. Assessment of Presumptive Baseline Contamination Existing at the Time of Transfer

The Parties agree that they will conduct an investigation to establish a presumptive baseline of sites on which a release of hazardous substances or discharge of oil has occurred (hereinafter, "release sites"). The investigation will include an examination by the United States of the lands to be transferred by the Parties and a complete search by SITLA and the State of files located in the Utah Department of Environmental Quality pertaining to actions on the lands transferred as part of the investigation. The Parties will complete such investigation prior to the date of transfer. The release sites identified will constitute the presumptive baseline release sites existing on the lands to be transferred at the time of transfer. The Parties are aware of the contractors, processes and methodologies that will be used in the investigation, and agree that the contractors, processes and methodologies are sufficient to establish the presumptive baseline release sites. The State or SITLA will contribute $115,000 as its share of the investigation within 60 days from the date of transfer, for the United States' Bureau of Land Management's investigation pursuant to Bureau of Land Management Contract No. 1422-N651-C4-3049, Task Order 98-5758, of the lands that the State or SITLA will transfer to the United States. Simultaneous with the payment of such amount by the State or SITLA, the United States will assign to the State or SITLA all rights of action against the contractor, C.C. Johnson and Mahotra, arising out of the aforementioned contract.

3. Grant of Mutual Right of Access

The Parties will grant reciprocal rights of access to the transferred lands for the limited purpose of taking any and all necessary actions related to the release, or potential release, of hazardous substances or discharge of oil located on the subject lands and to conduct any and all actions required under the terms of this MOU. Future use authorizations issued to third Parties will be subject to rights of access under this paragraph. Each grant of access will be of such terms as are mutually acceptable to the Parties.

4. Characterization of Contaminated Lands

a. The Parties will meet not later than 60 days after the date of transfer to address the need for any further investigation, or any further environmental characterization, of sites identified under Section IV(B)(2) of this MOU. At a minimum, the Parties agree to gather such additional information as is necessary to develop recommendations regarding any needed response actions to ensure compliance with all applicable Federal and State laws, and to determine the urgency of such action.

b. Characterization of the lands identified under Section IV(B)(2) will be completed under the terms established under section IV(B)(4)(a) within 180 days after the date of transfer. The Parties will make this information available to each other as it becomes available.

c. In the event that additional time is needed to complete any characterization required, including any additional characterizations required as a result of information gathered by the Parties, the Parties will consult with each other and agree as to the amount of time necessary to complete such characterization.

5. Response Actions on Contaminated Lands

The Parties will meet not later than 240 days after the date of transfer to develop plans to address the necessity or urgency of response actions on the characterized release sites. Each Party, to the extent responsible under any State or Federal law applicable at the time of transfer, will address environmental conditions on the lands, which it has or will transfer, so that the lands are in compliance with all applicable Federal or State law governing the release of hazardous substances or the discharges of oil. The Parties will conduct response actions on any contaminated lands to achieve a permanent remedy of conditions on the lands which pose a present or future threat to human health or the environment, and to a condition consistent with the lands' reasonably anticipated future land use, as identified by the Party to whom the land was or will be transferred. If there is disagreement as to the urgency, necessity, or degree of response action required, the Parties will use the dispute resolution procedure identified under this MOU. Nothing herein prevents any Party from seeking contribution or indemnification for the costs of response action from any persons or entities who contaminated the lands or otherwise ensuring that responsible parties perform or contribute their share of the costs of response actions.

6. Further Response Actions

As provided by this Section IV(B)(6), the Party that will transfer or has transferred the subject land (hereinafter, "transferring Party") will conduct and fund any reasonable additional response action determined to be necessary by the Party which has or will receive the subject land (hereinafter, "non-transferring Party") after response actions under Section IV(B)(5) have been completed if:

a. The remedy fails (e.g., the remedy fails to meet previously identified response action goals or response objectives) and such failure occurs not as a result of the acts or omissions of the non-transferring Party;

b. Additional hazardous substance releases or discharges of oil are identified, which are demonstrated by the non-transferring Party to have existed on the subject land prior to transfer and have not been previously identified, that create conditions inconsistent with the established reasonably anticipated land use; or

c. A statute, a regulation, a final and binding court order, or a final and binding administrative order necessitates additional response actions to address the presence of hazardous substances or discharges of oil attributable to the transferring Party on the property, provided that the order is not occasioned by the non-transferring Party's physical activities on the property.

7. Dispute Resolution

If a dispute arises under Part IV of this MOU that is not resolved informally between the United States and the State or SITLA, then either Party may pursue the following dispute resolution procedure:

a. The Party which seeks resolution will provide a written statement of its dispute, along with any rationale or supporting documents, to the other Party. The Parties will engage in discussions in an attempt to arrive at a consensus and resolve the dispute.

b. If no resolution is reached within thirty (30) calendar days of receipt of the statement of dispute, then the dispute may be elevated to the Parties' respective headquarters-level officials, or their designees. The headquarters-level officials for the United States and Utah will engage in discussions in an attempt to arrive at a consensus. If consensus is not achieved, the Parties will refer the matter in accordance with section IV(B)(7)(c) within thirty (30) calendar days.

c. Any matter referred under section IV(B)(7)(b) will be elevated to the principal environmental policy makers for the State or SITLA and the Department of the Interior, or the Department of Agriculture in the case of a matter concerning NFS lands, who will resolve the matter, and transmit their determination in written form to the Parties involved. In the case of Utah, the principal environmental policy maker is the Governor of Utah or his or her designee. In the case of the United States, the principal environmental policy maker is the Assistant Secretary, Land and Minerals Management or his or her designee, except that with respect to matters involving NFS lands, the principal environmental policy maker is the Under Secretary for Natural Resources and Environment or his or her designee.

d. These time limits may be extended on the mutual agreement of the Parties to the dispute.

V. Other General Provisions

A. The Parties will each provide notification of the conveyance and the terms of the Agreement and this Memorandum of Understanding to any current lessees, permittees, and mining claimants of record who hold interests in any lands subject to conveyance under the Agreement.

B. For any contract for mineral materials under the Materials Act of 1947, 30 U.S.C. §§ 601-604, applicable to lands conveyed to the State under the Agreement, payments under the contract due to the United States for materials severed, extracted, or removed before the date of conveyance will be paid to the United States.

C. For all non-mineral-related revenues (including for grazing permits and leases, rights-of-way, recreation permits, filming permits, etc.), whichever Party is entitled to a payment due before the date of conveyance will retain the full amount of the payment.

D. SITLA, BLM, and the USDA-Forest Service with respect to NFS lands, will share information regarding properties transferred under the Agreement, except that proprietary coal data and proprietary coal company data will not be shared with the USDA- Forest Service. SITLA, BLM and the USDA-Forest Service will maintain the confidentiality of all proprietary and confidential information to the extent authorized under applicable law.

E. SITLA, BLM, and the USDA-Forest Service with respect to NFS lands, will work to establish Intergovernmental Personnel Act assignments from their respective staffs to further the implementation of this Memorandum of Understanding.

F. SITLA and BLM, and the USDA-Forest Service with respect to NFS lands, each will provide technical assistance to the other to facilitate implementation of the Agreement.

G. With respect to any administrative appeals within DOI, USDA-Forest Service or the State pending on the date of conveyance involving lands conveyed to SITLA or to the United States under the Agreement that encompass issues that may have prospective implications, the Parties agree to work cooperatively to analyze and resolve the effect of the conveyance on those matters.

H. Each Party conveying land under the Agreement will, upon request of the Party receiving the land, seek to enforce existing surety or financial guarantees for unfulfilled lease obligations existing on the date of conveyance that the lessee does not correct.

I. SITLA agrees that if MMS does not receive any of the amounts due under the Agreement by the date those amounts are due under this Memorandum of Understanding, SITLA will pay interest on any unpaid amount from the date due until the date paid at the same five-year Treasury note simple interest rate prescribed in section I.D.4.(b) of this Memorandum of Understanding.

J. Nothing in this Memorandum of Understanding is intended to limit the rights or obligations of the Parties under the Act or Agreement.

K. This Memorandum of Understanding is subject to modification by later agreement in writing.

L. For purposes of this Memorandum of Understanding, references to the State of Utah may mean SITLA, and references to SITLA may mean the State of Utah, as the context requires.

M. This Memorandum of Understanding may be executed in counterparts, each to be considered an original for all purposes, and collectively to be considered a single document.

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VI. **Exclusion**

This Memorandum of Understanding does not apply to lands conveyed to the United States under paragraphs 2(A) and 2(B) of the Agreement, which the United States will hold in trust for the Navajo Nation and Goshute Tribe, respectively, and which will be the subject of a separate Memorandum of Understanding among the Parties and the Navajo Nation and Goshute Tribe.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR

By: _____

Title: _____

Date: _____

FOR THE UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

By: David T Terry

Title: DIRECTOR

Date: JANUARY 5, 1999

APPROVED AS TO FORM:
JAN GRAHAM
ATTORNEY GENERAL
By _____

FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE

By: _____

Title: _____

Date: _____

VI. Exclusion

This Memorandum of Understanding does not apply to lands conveyed to the United States under paragraphs 2(A) and 2(B) of the Agreement, which the United States will hold in trust for the Navajo Nation and Goshute Tribe, respectively, and which will be the subject of a separate Memorandum of Understanding among the Parties and the Navajo Nation and Goshute Tribe.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR

By: Sylvia V Baca

Title: Acting Assistant Secretary, Land and Minerals Management

Date: JAN - 5 1999

FOR THE UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

By: _____

Title: _____

Date: _____

FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE

By: _____

Title: _____

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FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR

By: _____

Title: _____

Date: _____

FOR THE UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

By: _____

Title: _____

Date: _____

FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE

By: Anne Keys Kennedy

Anne Keys Kennedy

Title: Deputy Under Secretary, Natural Resources and Environment

Date: JAN - 5 1999

APPENDIX 1

Provisions relating to "Hazardous Substances," and "Indemnification" in each lease SITLA issues on lands subject to reversion to the United States under sections 3(F), 3(K), 3(L), and 3(M) of the Agreement (the Cottonwood, Mill Fork, Dugout, Muddy, and North Horn tracts) will include:

> Hazardous Substances. Lessee [or other occupant pursuant to any agreement authorizing mining] shall not keep on or about the premises any hazardous substances, as defined under 42 U.S.C. § 9601(14) or any other Federal environmental law, any regulated substance contained in, or released from, any underground storage tank, as defined by the Resource Conservation and Recovery Act at 42 U.S.C. § 6991, *et seq*, or substances defined and regulated as "hazardous " by applicable State law, (hereinafter, for the purpose of this paragraph, collectively referred to as, "Hazardous Substances") unless such substances are reasonably necessary in Lessee's mining operations, and the use of such substances or tanks is noted and approved in the Lessee's mining plan, and unless Lessee fully complies with all Federal, State and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended. Lessee shall immediately notify Lessor, the Bureau of Land Management, and any Federal, State and local agency with jurisdiction over the subject land, or contamination thereon, of (I) all reportable spills or releases of any Hazardous Substance affecting the Leased Premises, (ii) all failures to comply with any applicable Federal, state or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended, (iii) all inspections of the Leased Premises by, or any correspondence, order, citations, or notifications form any regulatory entity concerning Hazardous Substances affecting the Leased Premises, (iv) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private Party concerning the Leased Premises.
>
> Hazardous Substances Indemnity. Lessee [or other occupant pursuant to any agreement authorizing mining] shall indemnify, defend, and hold harmless Lessor and the United States (as successor Lessor or owner pursuant to reversion or as owner of surface estate) its agencies, employees, officers, and agents with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, transportation, generation and/or sale or location upon or affecting the Leased premises of hazardous substances, as defined under 42 U.S.C. § 9601(14) or any other Federal environmental law, any regulated substance contained in, or released from, any underground storage tank, as defined by the Resource Conservation and Recovery Act at 42 U.S.C. § 6991, *et seq.*, or substances defined and regulated as "hazardous" by applicable State law, or that of Lessee's employees, agents, assigns, sublessees, contractors, subcontractors,

licensees or invitees, and for any breach of this lease's provisions concerning the aforementioned substances or tanks.

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING BETWEEN THE UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, THE UNITED STATES DEPARTMENT OF AGRICULTURE, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR

Recitals

A. The Utah Schools and Land Exchange Act of 1998, Pub. L. 105-335, 112 Stat. 3139 (the "Act"), ratified the May 8, 1998 "Agreement to Exchange Utah School Trust Lands Between the State of Utah and the United States of America" entered into between the State of Utah and the United States of America (the "Agreement").

B. On or about January 5, 1999, the United States Department of the Interior ("DOI"), the United States Department of Agriculture, Forest Service ("USDA-Forest Service"), and the Utah School and Institutional Trust Lands Administration ("SITLA") (collectively the "Parties") entered into a Memorandum of Understanding concerning the implementation of the Act and the Agreement (the MOU").

C. Pursuant to Section I.B. of the MOU, SITLA agreed that for each coal lease that SITLA issues on lands subject to reversion to the United States under sections 3(F), 3(K), 3(L) and 3(M) of the Agreement (the Cottonwood, Mill Fork, Dugout, Muddy and North Horn Tracts), SITLA would include certain specific lease provisions intended to protect the reversionary interests of the United States in those tracts.

D. The Parties desire to amend and restate Section I.B. of the MOU to provide more workable lease provisions.

E. The Parties further desire to amend the MOU to address unanticipated issues concerning venting of coalbed methane for safety reasons, issuance of potentially-conflicting leases and permits, confidentiality of operator data, and Mineral Leasing Act acreage limitations.

Amendment to Memorandum of Understanding

1. **Amended and Restated Section I.B.** Section I.B. of the MOU is hereby amended and restated in its entirety as follows:

B. Lease Instrument Contents

SITLA agrees that for each coal lease SITLA issues on lands subject to reversion to the United States under sections 3(F), 3(K), 3(L) and 3(M) of the Agreement (the Cottonwood, Mill Fork, Dugout, Muddy and North Horn Tracts), SITLA will include the following provisions in the lease terms:

1. Reversion of Leased Premises to United States. Pursuant to the May 8, 1998

"Agreement to Exchange Utah School Trust Lands Between the State of Utah and the United States of America", as ratified by Pub. L. No. 105-335, 112 Stat. 3139, ownership of the Leased Premises shall revert to the United States when _____ [INSERT TRACT-SPECIFIC REVERSION PROVISIONS HERE] _____. Upon reversion, the United States shall succeed the State of Utah as Lessor.

2. Royalty Valuation After Reversion. After reversion of the Leased Premises to the United States, the Secretary of the Interior may establish the reasonable value of post-reversion production for royalty purposes in the same manner and by the same methods as the United States establishes value under coal leases issued by the United States.

3. Regulation Upon Reversion. After reversion of the Leased Premises to the United States pursuant to paragraph ____, Reversion of Leased Premises to United States, Lessee will be subject to the requirements of the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.* (the "MLA"), and to the royalty, operating, and administrative procedure rules and regulations of the Department of Interior, the Minerals Management Service, and the Bureau of Land Management, and to any other federal laws and regulations generally applicable to coal leases issued under the MLA to the same extent as if the Lease were a federally-issued lease. Notwithstanding the foregoing, to the extent that the State, as Lessor, approves a significant operational decision prior to reversion, and Lessee makes a substantial economic commitment based upon that approval, Lessee may continue to rely upon that approval after reversion; provided, however, that no such approval shall act to limit the liability of Lessee, if any, under CERCLA, RCRA, the Clean Water Act, 33 U.S.C. § 1251 *et seq* or other applicable environmental law. Upon reversion, nothing in this paragraph shall be deemed to require or suggest that the Leased Premises be included in the calculation of acreage held by Lessee for the purposes of the acreage limitation provisions of the MLA and associated regulations.

4. Hazardous Substances. Lessee [or other occupant pursuant to any agreement authorizing mining] shall not keep on or about the premises any hazardous substances, as defined under 42 U.S.C. § 9601(14) or any other Federal environmental law; any regulated substance contained in or released from any underground storage tank, as defined by the Resource Conservation and Recovery Act, 42 U.S.C. § 6991, *et seq;* or any substances defined and regulated as "hazardous" by applicable State law, (hereinafter, for the purposes of this Lease, collectively referred to as "Hazardous Substances") unless such substances are reasonably necessary in Lessee's mining operations, and the use of such substances or tanks is noted and approved in the Lessee's mining plan, and unless Lessee fully complies with all Federal, State and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended, governing Hazardous Substances. Lessee shall immediately notify Lessor, the Bureau of

Land Management, the surface management agency, and any other Federal, State and local agency with jurisdiction over the Leased Premises, or contamination thereon, of (i) all reportable spills or releases of any Hazardous Substance affecting the Leased Premises; (ii) all failures to comply with any applicable Federal, state or local law, regulation or ordinance governing Hazardous Substances, as now enacted or as subsequently enacted or amended; (iii) all inspections of the Leased Premises by, or any correspondence, order, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Leased Premises; and (iv) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private Party concerning the Leased Premises.

5. Hazardous Substances Indemnity. Lessee [or other occupant pursuant to any agreement authorizing mining] shall indemnify, defend, and hold harmless Lessor and the United States (as successor Lessor or owner pursuant to reversion or as owner of surface estate) its agencies, employees, officers, and agents with respect to any and all damages, costs, liabilities, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs arising out of or in any way related to Lessee's use, disposal, transportation, generation, sale or location upon or affecting the Leased Premises of Hazardous Substances, as defined in this Lease. This indemnity shall extend to the actions of Lessee's employees, agents assigns, sublessees, contractors, subcontractors, licensees and invitees. Lessee shall further indemnify, defend and hold harmless Lessor and the United States from any and all damages, costs, liabilities, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs arising out of or in any way related to any breach of the provisions of this Lease concerning Hazardous Substances. This indemnity is in addition to, and in no way limits, the general indemnity contained in paragraph 16.1 of this Lease.

6. Waste Certification. The Lessee shall provide upon abandonment, transfer of operation, assignment of rights, sealing-off of a mined area, and prior to lease relinquishment, certification to the Lessor and the Bureau of Land Management that, based upon a complete search of all the operator's records for the Lease, and upon its knowledge of past operations, there have been no reportable quantities of hazardous substances as defined in 40 Code of Federal Regulations §302.4, or used oil as defined in Utah Administrative Code R315-15, discharged (as defined at 33 U.S.C. §1321(a)(2)), deposited or released within the Leased Premises, either on the surface or underground, and that all remedial actions necessary have been taken to protect human health and the environment with respect to such substances. Lessee shall additionally provide to Lessor and the Bureau of Land Management a complete list of all hazardous substances, hazardous materials, and their respective Chemical Abstracts Service Registry Numbers, and oil and petroleum products used or stored on, or delivered to, the Leased Premises. Such disclosure will be in addition to any other disclosure required by law or agreement.

7. Lease Bond Required. At the time this Lease is executed, Lessee shall execute and file with the Lessor a good and sufficient bond or other financial guarantee acceptable to Lessor in order to: (a) guarantee Lessee's performance of all covenants and obligations under this Lease, including Lessee's obligation to pay royalties; and (b) ensure compensation for damage, if any, to the surface estate and any surface improvements. The Lease Bond shall meet all federal mineral lease bond requirements as described in 43 Code of Federal Regulations Subpart 3474. The Lease Bond shall further provide that upon forfeiture after reversion of the Leased Premises to the United States, the Lease Bond shall be payable to the Secretary of the Interior.

8. Royalty Payment. After reversion of the Leased Premises to the United States pursuant to paragraph ___, Reversion of Leased Premises to United States, Lessee shall report production and royalties monthly in accordance with applicable federal regulations.

9. Federal Inspections. Lessee agrees that, prior to reversion of the Leased Premises to the United States, employees and authorized agents of the Bureau of Land Management ("BLM") may conduct underground inspections of the Leased Premises, both independently and in cooperation with the State in its capacity as Lessor. After reversion, employees and authorized agents of BLM may conduct underground inspections of the Leased Premises under the authority of applicable federal laws and regulations.

2. **Venting of Coalbed Methane for Safety Reasons.** In patents for coal tracts issued to SITLA pursuant to the Act, DOI reserved coalbed methane to the United States. Under certain circumstances, venting of coalbed methane may be necessary to ensure the safety of coal mining operations and/or compliance with safety regulations imposed by the U.S. Mine Safety and Health Administration ("MSHA"). DOI agrees that it will not unreasonably withhold consent to the venting of coalbed methane by SITLA's coal lessees as necessary for safety reasons and/or MSHA compliance. Such consent may be conditioned upon resolution of conflicts with existing federal oil and gas leases, payment of royalties for coalbed methane that is captured and used by the lessee, and other requirements that would not unreasonably interfere with coal mining operations.

3. **Consultation Concerning Potentially-Conflicting Uses.** In order to minimize conflicts with coal mining operations, DOI and USDA-Forest Service agree to consult with SITLA prior to issuance of federal leases and permits that have the potential to conflict with coal mining operations on coal tracts conveyed to SITLA pursuant to the Agreement, including but not limited to oil and gas leases and power line and utility easements.

4. **Confidentiality of Operator Data**. To the extent permissible by applicable federal law, DOI shall keep confidential geologic and business data obtained by it pursuant to its right under this MOU to conduct underground inspections of coal tracts that are subject to reversion to the United States under the Agreement.

5. **Mineral Leasing Act Acreage Limitations.** DOI recognizes and acknowledges that leases issued by SITLA on coal tracts that are subject to reversion to the United States under the Agreement do not constitute leases issued under the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.* (the "MLA"). As such, the acreage within leases issued by SITLA shall not be considered by DOI in the calculation of lessee acreage limitations under the MLA upon reversion of the underlying tracts to the United States pursuant to the Agreement.

6. **Effect of Indemnity**. It is the understanding of SITLA that the general indemnity provisions contained in paragraph 16.1 of the proposed SITLA coal lease form for tracts in which the United States has a reversionary interest, as that paragraph of such lease form is attached hereto and incorporated by reference, extends to indemnification of the Lessor (including the United States as successor Lessor after reversion of the Leased Premises to the United States) for claims, demands, liabilities, damages and penalties incurred as a result of the Lessee's violation of applicable statutes, regulations and ordinances relating to public health, pollution control, management of hazardous substances and environmental protection, compliance with which is required pursuant to paragraph 9.3 of the proposed lease form (as such paragraph is also attached hereto and incorporated by reference).

7. **Transfer of Minimum Royalty Credit Balance at Reversion**. It is contemplated by the Parties that leases of coal tracts acquired by SITLA pursuant to the Act may require the coal lessee to pay minimum lease royalties to keep the respective leases in effect beyond the primary term, and that such minimum royalties will constitute a credit against future production royalties. The Parties further contemplate the possibility that, at the time certain tracts revert to the United States, the lessee may have paid to SITLA minimum royalties in an amount which would create a credit against production royalties accruing to the United States on production after reversion. In order to prevent loss to the United States in such event, SITLA agrees to pay to the United States any credit balance that exists in the minimum royalty account of any coal lease of the Mill Fork, Dugout, Muddy, or North Horn tracts at the time of reversion of that lease. SITLA shall pay such credit balance(s), without interest on accrued amounts, to the United States within ninety (90) days of the reversion. Nothing in this paragraph shall obligate SITLA to pay interest to the United States on minimum royalty amounts collected by it prior to reversion. In the event that any lease of the above-described tracts terminates or is canceled prior to reversion, SITLA shall be entitled to retain all minimum royalty amounts collected by it under that lease without obligation to the United States at the time of any future reversion. Nothing in this paragraph shall prevent SITLA from recouping or recovering from the State of Utah the State's proportionate share of previously collected and distributed minimum royalties that are required to be paid to the United States pursuant to this paragraph, or from reserving from distributions such amounts as are deemed necessary to meet SITLA's potential obligation under this paragraph.

8. **Effect of Amendment.** Except as expressly amended herein, the MOU is unamended and remains in full force and effect by and between the Parties.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the MOU.

FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR

By: Sylvia V. Baca

Title: Acting Assistant Secretary

Date: MAR 23 1999

FOR THE UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

By: David T Terry

Title: Director

Date: _____

FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE

By: Anne Kennedy

Title: Deputy Under Secretary

Date: 4-16-99

ATTACHMENT

SITLA Coal Lease Form Paragraphs 9.3 and 16.1

9.3 Other Applicable Laws and Regulations. Lessee shall comply with all applicable federal, state and local statutes, regulations, and ordinances, including without limitation the Utah Coal Mining and Reclamation Act, applicable statutes and regulations relating to mine safety and health, and applicable statutes, regulations and ordinances relating to public health, pollution control, management of hazardous substances and environmental protection.

16.1 Indemnity. Except as limited by paragraph 7.2, Inspection, Lessee shall indemnify and hold Lessor and the United States (as successor Lessor or owner pursuant to reversion or as owner of surface estate) harmless for, from and against each and every claim, demand, liability, loss, cost, damage and expense, including, without limitation, attorneys' fees and court costs, arising in any way out of Lessee's occupation and use of the Leased Premises, including without limitation claims for death, personal injury, property damage, and unpaid wages and benefits. Lessee further agrees to indemnify and hold Lessor harmless for, from and against all claims, demands, liabilities, damages and penalties arising out of any failure of Lessee to comply with any of Lessee's obligations under this Lease, including without limitation attorneys' fees and court costs.